

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHRISTOPHER HOWE, individually and on behalf of all others similarly situated,	)	
	)	
	)	
	)	
Plaintiff,	)	No. 1:17-cv-07303
	)	
v.	)	Hon. Andrea R. Wood
	)	
SPEEDWAY LLC, MARATHON PETROLEUM COMPANY, and KRONOS, INC.,	)	Magistrate Judge Hon. Susan E. Cox
	)	
	)	
Defendants.	)	

**SPEEDWAY LLC'S AND MARATHON PETROLEUM COMPANY'S  
RESPONSE TO PLAINTIFF'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff's Second Notice of Supplemental Authority ("Second Notice") asks this Court to take notice of *Collier v. SP Plus Corp.*, No. 17-2431, 2018 WL 2186786 (7th Cir. 2018) ("Collier"). (Dkt. No. 78.) For the reasons explained below, Speedway LLC and Marathon Petroleum Company (together, "Speedway") dispute that *Collier* changes the proper analysis of Plaintiff's Motion for Remand, which should be denied. (See Dkt. No. 55.)

1. In *Collier*, plaintiffs sued SP Plus Corp. in Illinois Circuit Court in a putative class action under the Fair and Accurate Credit Transaction Act. See *Collier* at \*1. SP Plus removed the case to the United States District Court for the Northern District of Illinois, arguing that the district court had federal question jurisdiction. SP Plus then moved to dismiss for lack of subject matter jurisdiction under Article III, after which the plaintiffs moved to remand the case back to state court. *Id.*

2. The district court denied the motion to remand and granted plaintiffs leave to amend their complaint to satisfy Article III. *Id.* "When they did not, the court dismissed the case

with prejudice.” *Id.* The United States Court of Appeals for the Seventh Circuit vacated that judgment and ordered the district court to remand the case back to the Illinois Circuit Court.

*Collier* at \*3. The Seventh Circuit declined to order fees and costs for improper removal. *Id.*

3. *Collier* is distinguishable from this case, and does not support granting Plaintiff’s Motion for Remand. The defendant in *Collier* moved to dismiss on the ground that the district court lacked subject matter jurisdiction, arguing that the plaintiff had not suffered an injury. *Collier* at \*1. By contrast, Speedway’s position is that “standing exists under Article III, period” (Dkt. No. 55 at 4) and that certain of “Plaintiff’s alleged injuries suffice to establish jurisdiction” (*id.* at 8) even though they do not support Plaintiff’s claim under the Illinois Biometric Information Privacy Act. Accordingly, unlike the defendant in *Collier*, Speedway has “establish[ed] that all elements of jurisdiction—including Article III standing—existed at the time of removal.” *Collier* at \*2.

4. Additionally, the Seventh Circuit in *Collier* declined to award fees and costs for improper removal under 28 U.S.C. § 1447(c), even though the defendant removed to federal court and then immediately challenged the existence of federal jurisdiction. *Id.* at \*3. Speedway’s position on removal has a far more “objectively reasonable basis” than that. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Accordingly, although Speedway believes that jurisdiction exists, if the Court disagrees, it should nevertheless follow the *Collier* court in declining to award fees and costs.

Dated: May 18, 2018

Respectfully submitted,

SPEEDWAY LLC and  
MARATHON PETROLEUM COMPANY

By: /s/ Gary M. Miller  
One of Their Attorneys

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Marathon Petroleum Company***

**CERTIFICATE OF SERVICE**

I, Patrick J. Castle, an attorney, hereby certify that on **May 18, 2018**, I caused a true and correct copy of **SPEEDWAY LLC'S AND MARATHON PETROLEUM COMPANY'S NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND** to be served on counsel of record via ECF pursuant to the General Order on Electronic Filing of the United States District Court, Northern District of Illinois, addressed as follows:

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